

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-15, and 19-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferree (U.S. Pat. No. 6,706,068) in view of Robioneck et al. (US Pat. No. 6,106,557). Ferree discloses the following of the claimed invention: an intervertebral implant, comprising: two articulating parts each having a central axis (see Attachment A), each having a slide surface intersecting the central axes (see Attachment A) and each having an outermost end, wherein: the slide surfaces are curved, the slide surfaces are mutually displaceable (Figures 1-3) at varying angulations and distances, and the slide surfaces are saddle-shaped having a compound radius with at least two inflection points (see Figure 1-3). The second articulating part may be rotatable about two skewed axes of rotation that are spaced from each other by between 0.1 and 20 mm (please see Figures 1-3). The implant is made of ceramic as described in col. 4, lines 50-60. Ferree does not teach the connecting elements being removable within an oval recess on the outermost ends of the articulating parts. Robioneck et al. teaches a vertebral implant with such removable connection elements in Figures 1-7 and columns 5 and 6 for the purpose of securing the connection elements to the rest of the prosthesis. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have removable

connection elements on the vertebral prosthesis in order to securing the connection elements to the rest of the prosthesis.

In addition, it would be obvious to one having ordinary skill in the art at the time the invention was made to make the first plate and first member separate, since it has been held that constructing a formerly integral structure into various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Response to Arguments

Applicant's arguments filed 3/20/2008 have been fully considered but they are not persuasive. The axes of rotation, added to claim 1, are may be arbitrarily placed in space, and therefore, the articulating parts of the Ferree reference could have axes drawn to them that are spaced apart between 0.1 and 20 mm. Please see Ferree's Figures 1-3.

Regarding the combination of the Ferree and the Robioneck et al. references, the Robioneck et al. reference discloses an oval opening to house elements 18 and 20, as shown in Figures 1-7. The construction demonstrates the claimed modularity of the device, which may be applied to the Ferree reference. By dividing the integral plate structure of Ferree into modular pieces, they would be capable of moving in and out the disc space, thus meeting the claims' limitations. In addition, it has been held that constructing a formerly integral structure, such as the articulating parts claimed here, into various elements involves only routine skill in the art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3738

/Ann Schillinger/

Examiner, Art Unit 3774

/Corrine M McDermott/

Supervisory Patent Examiner, Art Unit 3738

Attachment A

